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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|--------------------------------|------------------|
| 10/622,349 | 07/18/2003 | Frederick John Rice | 35332.12.1 | 4817 |
| 7590 James R. Haller Fredrikson & Byron, P.A. 4000 Pillsbury Center 200 South Sixth Street Minneapolis, MN 55402-1425 | | 03/08/2007 | EXAMINER KIM, CHRISTOPHER S | |
| | | | ART UNIT 3752 | PAPER NUMBER |
| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE | | |
| 3 MONTHS | 03/08/2007 | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/622,349 | RICE ET AL. |
| | Examiner | Art Unit |
| | Christopher S. Kim | 3752 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 February 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 47-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 47-63 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 12, 2007 has been entered.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Objections

3. Applicant is advised that should claim 58 be found allowable, claim 59 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

4. Claims 47-63 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 51 and 60 recite "the arm of the L-shaped member has a length comparable to a diameter of the body of the retaining means such that..." The disclosure, as originally filed, does not appear to teach the newly recited limitation.

Claims 47, 48, 53, 54 and 57 recite, "...the shank and arm remaining stationary relative to the tap at all times..." The disclosure, as originally filed, fails to disclose the negative limitation. The specification, on page 3, lines 11-22, teach fixed and movable jaws 51, 52 of the attachment means 50 may be tightened or loosened about the downwardly depending end 72 of the tap 70 by tightening or loosening a screw 54. It seems clear that the shank and arm can be moved relative to the tap when screw 54 is loosened.

5. Claims 49-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The preamble of claims 49-52 is inconsistent with that of their parent claim 47.

6. Claims 47, 48, 51, 52, 54, 55, 57, 60, 61 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Migliozzi (4,081,139).

Migliozzi discloses a soap dispenser comprising: a retaining means comprising a body 50; attaching means comprising an L-shaped member having an arm 28, 32 (the arm having a clamp 18) and a shank 20; a pivotal member 38, 40, 42, 44, 46 (the portion of spokes 38, 40, 42, 44, 46 radially inward of basket 50); an external projection 38, 40, 42, 44, 46, 36 (the portion of spokes 38, 40, 42, 44, 46 radially outward of basket 50 and rim 36).

Migliozzi differs from what is being claimed in that Migliozzi's device pivots about a bearing member 22 which is nothing more than the doubling over of stock material from which the mounting bracket 16 is fabricated (see column 2, lines 44-53).

Migliozzi's pivotal members/spokes 38, 40, 42, 44, 46 are also simply wrapped around shank/shaft 20. Making the shank/shaft 20 integral with bracket 16 and allowing the pivot to occur where pivotal members/spokes 38, 40, 42, 44, 46 are wrapped around shank/shaft 20 is well within ordinary skill in the art. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have made the shank/shaft 20 integral with bracket 16 and located the pivot to occur where pivotal members/spokes 38, 40, 42, 44, 46 are wrapped around shank/shaft 20 in the device of Migliozzi to allow ease in turning rim 36. Turning rim 36 provides added torque resulting in ease in turning rim 36.

Regarding claims 55 and 62, Migliozzi differs from what is being claimed in the lip member being separable. The top rim of Migliozzi's basket 50 is integral with the

basket. It would have been obvious to one having ordinary skill in the art at the time the invention was made to separate Migliozzi's rim from the basket, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

7. Claims 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Migliozzi (4,081,139) in view of Bishop (855,428).

This rejection is provided in anticipation of applicant's argument that it is not a fair reading of Migliozzi to separate the spokes 38, 40, 42, 44, 46 into radially inward and outward portions relative to basket 50 to define a pivotal member and an external projection, respectively. If so, it can be argued that Migliozzi's body lacks an external projection mounted to and extending outwardly of the body. Bishop shows, in figure 1, an external projection on body 5. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the external projection of Bishop to the basket of Migliozzi to provide a gripping surface so that the basket can be easily manipulated.

8. Claims 49, 50, 58 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Migliozzi (4,081,139) in view of Moss (2,647,797).

Migliozzi discloses the limitations of the claimed invention with the exception of the cylindrical soap and the body having a post. Moss discloses a cylindrical soap 35 and body 21 having a post 28. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the body 50 of Migliozzi with

the body of Moss to dispense scented substance, a water softener, or a medicated substance (Moss, col. 1, lines 3-10).

9. Claims 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Migliozzi (4,081,139) in view of Bishop (855,428) as applied to claims 47 and 48 above, and further in view of Moss (2,647,797).

Migliozzi in view of Bishop discloses the limitations of the claimed invention with the exception of the cylindrical soap and the body having a post. Moss discloses a cylindrical soap 35 and body 21 having a post 28. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided a post to the body 50 of Migliozzi as taught by Moss to dispense scented substance, a water softener, or a medicated substance (Moss, col. 1, lines 3-10).

Response to Arguments

10. Applicant's arguments filed February 12, 2007 have been fully considered but they are not persuasive.

Applicant argues that claim 51 does not contain new matter because the drawing shows the claimed configuration. The drawing appears to shows the arm of the L shaped member being longer than the diameter of the body of the retaining means.

Applicant argues that if Migliozzi's shank and arm were made integral, the device would be inoperable. Making Migliozzi's spokes 38, 40, 42, 44, 46 revolve on shaft 20 rather than shaft 20 rotating in arm 32 would not make the device inoperable. The end

result would be the same. The basket 50 would revolve around axis of shaft 20 to enter and exit the water stream from shower head 12.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (571) 272-4905. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher S. Kim
Primary Examiner
Art Unit 3752

CK